

SENATE BILL No. 124

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-6.

Synopsis: Credit time for pretrial home detention. Permits a person serving pretrial home detention to earn credit time. Makes conforming amendments.

Effective: July 1, 2005.

Paul

January 4, 2005, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 124



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-50-6-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A person
3 assigned to Class I earns one (1) day of credit time for each day ~~he~~ **the**
4 **person** is:

- 5 (1) imprisoned for a crime; or
- 6 (2) confined **or on home detention** awaiting trial or sentencing.
- 7 (b) A person assigned to Class II earns one (1) day of credit time for
- 8 every two (2) days ~~he~~ **the person** is imprisoned for a crime or confined
- 9 awaiting trial or sentencing.
- 10 (c) A person assigned to Class III earns no credit time.

11 SECTION 2. IC 35-50-6-4 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person
13 imprisoned for a crime or imprisoned **or on home detention** awaiting
14 trial or sentencing is initially assigned to Class I.

15 (b) A person **imprisoned for a crime or imprisoned awaiting trial**
16 **or sentencing** may be reassigned to Class II or Class III if ~~he~~ **the**
17 **person** violates any of the following:



- 1 (1) A rule of the department of correction.
 - 2 (2) A rule of the penal facility in which ~~he~~ **the person** is
 - 3 imprisoned.
 - 4 (3) A rule or condition of a community transition program.
- 5 However, a violation of a condition of parole or probation may not be
6 the basis for reassignment. Before a person may be reassigned to a
7 lower credit time class, ~~he~~ **the person** must be granted a hearing to
8 determine ~~his~~ **the person's** guilt or innocence and, if found guilty, whether
9 reassignment is an appropriate disciplinary action for the violation. The
10 person may waive ~~his~~ **the person's** right to the hearing.

11 **(c) A person on home detention awaiting trial or sentencing may**
12 **not be reassigned to Class II or Class III. However, a court may**
13 **revoke the placement of a person on home detention who violates**
14 **a condition of home detention.**

15 ~~(c)~~ **(d)** In connection with the hearing granted under subsection (b),
16 the person is entitled to:

- 17 (1) have not less than twenty-four (24) hours advance written
- 18 notice of the date, time, and place of the hearing, and of the
- 19 alleged misconduct and the rule the misconduct is alleged to have
- 20 violated;
- 21 (2) have reasonable time to prepare for the hearing;
- 22 (3) have an impartial decisionmaker;
- 23 (4) appear and speak in ~~his~~ **the person's** own behalf;
- 24 (5) call witnesses and present evidence;
- 25 (6) confront and cross-examine each witness, unless the hearing
- 26 authority finds that to do so would subject a witness to a
- 27 substantial risk of harm;
- 28 (7) have the assistance of a lay advocate (the department may
- 29 require that the advocate be an employee of, or a fellow prisoner
- 30 in, the same facility or program);
- 31 (8) have a written statement of the findings of fact, the evidence
- 32 relied upon, and the reasons for the action taken;
- 33 (9) have immunity if ~~his~~ **the person's** testimony or any evidence derived
- 34 from ~~his~~ **the person's** testimony is used in any criminal proceedings; and
- 35 (10) have ~~his~~ **the person's** record expunged of any reference to the charge
- 36 if ~~he~~ **the person** is found not guilty or if a finding of guilt is later
- 37 overturned.

38 Any finding of guilt must be supported by a preponderance of the
39 evidence presented at the hearing.

40 ~~(d)~~ **(e)** A person may be reassigned from Class III to Class I or Class
41 II or from Class II to Class I. A person's assignment to Class III or Class
42 II shall be reviewed at least once every six (6) months to determine if

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1 ~~he~~ **the person** should be reassigned to a higher credit time class.
 2 SECTION 3. IC 35-50-6-5 IS AMENDED TO READ AS
 3 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. **(a) This section**
 4 **does not apply to a person on home detention awaiting trial or**
 5 **sentencing.**
 6 ~~(a)~~ **(b)** A person may, with respect to the same transaction, be
 7 deprived of any part of the credit time ~~he~~ **the person** has earned for any
 8 of the following:
 9 (1) A violation of one (1) or more rules of the department of
 10 correction.
 11 (2) If the person is not committed to the department, a violation
 12 of one (1) or more rules of the penal facility in which the person
 13 is imprisoned.
 14 (3) A violation of one (1) or more rules or conditions of a
 15 community transition program.
 16 (4) If a court determines that a civil claim brought by the person
 17 in a state or an administrative court is frivolous, unreasonable, or
 18 groundless.
 19 However, the violation of a condition of parole or probation may not be
 20 the basis for deprivation. Whenever a person is deprived of credit time,
 21 ~~he~~ **the person** may also be reassigned to Class II or Class III.
 22 ~~(b)~~ **(c)** Before a person may be deprived of earned credit time, the
 23 person must be granted a hearing to determine ~~his~~ **the** guilt or innocence
 24 and, if found guilty, whether deprivation of earned credit time is an
 25 appropriate disciplinary action for the violation. In connection with the
 26 hearing, the person is entitled to the procedural safeguards listed in
 27 ~~section 4(c)~~ **section 4(d)** of this chapter. The person may waive ~~his~~ **the**
 28 right to the hearing.
 29 ~~(c)~~ **(d)** Any part of the credit time of which a person is deprived
 30 under this section may be restored.

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